

## REMARKS

Claims 1, 13 and 20 are amended. No claims are added or canceled. Hence, Claims 1, 3-24, and 26-54 are pending in this application.

### I. ISSUES NOT RELATED TO PRIOR ART

Claims 1-23 are rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Claims 1, 13 and 20 are amended to address this issue. Reconsideration and withdrawal of the rejections is respectfully requested.

### II. ISSUES RELATED TO PRIOR ART – 103(a) - *PURANIK*

Claims 1, 24, 36, 43, and 44 are rejected under 35 U.S.C. § 103(a) as allegedly anticipated by Puranik et al., U.S. Patent No. 6,003,090 (hereinafter "*Puranik*"). Applicant respectfully traverses the rejections.

#### **Independent Claim 1**

Claim 1 is directed to a method of measuring availability of a network element or service, and at least recites:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value; and  
storing, in memory, the second availability value;  
wherein determining the second availability value further comprises:  
    determining a dividend based on the first availability value, the first time value, the second time value, and the first operational state value; and  
    dividing the dividend by the second time value;  
wherein the first availability value indicates the availability of the network element at the first time value;  
wherein the second availability value indicates the availability of the network element at the second time value; and  
wherein the first time value indicates a first time that is **earlier than** a second time indicated by the second time value.  
(Emphasis added)

*Puranik* pertains to an approach in which an availability value on each path between

specific pairs of source/destination devices is determined, and, using availability values of different paths and relative weights assigned to the paths, an overall availability of the network is determined.

The Office Action argues that “*Puranik* fails to teach determining first and second availability of a single network element. However, *Puranik* does teach determining first and second availability of a single network based upon the components (devices) of that network. In this regard, if the whole network is broadly looked upon as a ‘single element’, then indeed *Puranik* does teach determining first and second availability of a single element.”

Respectfully, this argument is incorrect, and relies upon an unreasonably overbroad interpretation of the reference.

Claim 1 recites two availabilities of the same network element. In sharp contrast, availabilities of different paths in *Puranik* do not indicate availabilities **of the same network element** even if a path is regarded as a network element (which is an unreasonable interpretation). If a path is regarded as a network element, then different paths will be different network elements and availabilities of different paths will be different availabilities of different network elements. Furthermore, a path between two network element cannot be equated to either of the network elements. A path may be unavailable, while a network element is still available. Thus, the correlations between availabilities of different paths to availabilities of the same network elements are invalid, and *Puranik* fails to provide the claimed subject matter.

Even if the different availabilities of different paths in *Puranik* were the first and second availabilities of the same network element featured in Claim 1, *Puranik* still would only show availabilities that pertain to the same time. *Puranik* is about computing an aggregate availability from availabilities of various paths that pertain to the same time.

*Puranik* fails to describe determining a second availability value at a second time value based on a first availability value at a first time value and an operational state value, wherein the first time value indicates a first time that is earlier than a second time indicated by the second time value, as featured in Claim 1.

Conceptually, the aggregation in *Puranik* is over a spatial dimension, i.e., over different paths, while the determining step of Claim 1 is related to determining a later availability of a network element based in part on an earlier availability of the same network element.

For the reasons given above, Claim 1 is patentable over *Puranik*. Reconsideration is respectfully requested.

**Claims 24, 36, 43, and 44**

Claims 24, 36, 43, and 44 each recite similar features as those discussed above with respect to Claim 1. Therefore, Claims 24, 36, 43, and 44 are patentable for at least the same reasons discussed above as to Claim 1. Reconsideration and withdrawal of the rejections is respectfully requested.

**Claims 3-12, 26-35, 37-42, and 45-50**

Claims 3-12, 26-35, 37-42, and 45-50 are dependent upon and thus include each and every feature of Claim 1, 24, 36, 43, or 44 discussed above. Therefore, it is respectfully submitted that Claims 3-12, 26-35, 37-42, and 45-50 are allowable for at least the reasons given above with respect to Claim 1, 24, 36, 43, or 44. Reconsideration and withdrawal of the rejections is respectfully requested.

**III. ALLOWABLE SUBJECT MATTER**

Applicant appreciates the indication of allowance of Claims 51-54, allowability of Claims 13 and 20 if the 101 rejection is overcome, and allowability of Claims 3-6, 14-19, 26-

29, 36-42, 45-50 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 and 20, and Claims 14-19 and 21-23 by reason of dependency on Claims 13 and 20, are allowable, as Claims 13 and 20 are amended to overcome the 101 rejection.

#### IV. INTERVIEW SUMMARY

Applicant thanks the Examiner for the telephone interview conducted on April 13, 2009, in which Zhichong Gu represented Applicant and Mr. Ramy M. Osman represented the USPTO. Claims 1 and 20 were discussed in connection with the rejections under 35 U.S.C. 101. An agreement was reached that Claims 1 and 20 as amended would overcome the 101 rejections. Claim 1 and *Puranik* were discussed in connection with the rejection under 35 U.S.C. 102(e). No agreement on the allowability of Claim 1 was reached.

#### V. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to charge any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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